

REMARKS

Claims 1, 36-52 are in this application and are presented for consideration. New claims 36-52 have been added.

The office action requires restriction in this application to one invention. Applicant hereby restricts the present application to the invention of independent claim 36 and its dependent claims.

One embodiment of this invention is shown in figures 1, and 7. The mouthpiece 4 of the sampling tip 2 is to be inserted into the reagent container 47. When mouthpiece 4 is inserted into the reagent container 47, the sealing lip 52 closes off the end of the reagent container 47. In particular, this occurs just below the overflow channel 45. As the sample collector 1, 50, and the reagent container 47 are pressed further together, the sealing lip 52 moves further into the reagent container 47. This reduces the size of the volume enclosed by the reagent container 47 and the sample collector 1, 50. Correspondingly, an overpressure is generated in this volume which forces the sample liquid from the sample tip to into the cavity 10. This is described in the specification in paragraphs 9, 13, 18, 41 and 42.

The office action also requires an election of species between the filter mixer of previous claim 19, and the sealing lip and reagent container of claims 26-28. Applicant hereby elects the sealing lip and reagent container. Claims 36-52 are readable thereon.

The office action also requires election between the species of the sample collector with a puncturing device and a sample collector comprising a plunger with a puncturing device. Applicant hereby elects the species of a puncturing device. The requirement to indicate which claims read on this species is now moot since no present claims set forth a puncturing device.

The office action appears to indicate that many of the previous claims were unrelated because of a single difference between the claims. This is not an indication of independent inventions as per MPEP 806.06. Instead MPEP 806.06 indicates that inventions are independent if there is no disclosed relationship. Since the inventions of the previous claims have many relationships, regardless of how any differences there are, MPEP 806.06 clearly indicates that these claims cannot set forth inventions that independent of each other. The arguments supporting many of the restrictions made in the last office action are therefore untenable.

New claim 47 sets forth a sampling tip which is dimensionally stable during the collection of the sample liquid. In the previously applied reference of Rabenecker '894, there is no indication of a sampling tip which is dimensionally stable during a collection of a liquid. In previous office actions, the patent office appears to take the position that since materials used in Rabenecker are similar to those suggested by the present application, that any sampling tip of Rabenecker would also be dimensionally stable. This is incorrect, since the stability of a sampling tip does not depend solely on its material. Instead the construction of the sampling tip also determines whether the sampling tip is dimensionally stable. A sampling tip made of a foam that has large bubble sizes and thin walls, will be much more flexible and less stable than a foam with small bubble sizes and thick walls, even though both foams are made of the same material. Without a specific teaching of a dimensionally stable sampling tip, a person of ordinary skill would not be led to construct any sampling tip of Rabenecker to be a dimensionally stable sampling tip. Therefore Rabenecker cannot anticipate all the features of claim 36.

Claim 47 also sets forth that the sampling tip collects a predetermined amount of the sample liquid by capillary action. It appears from previous office actions, that the Patent Office is

taking the position that the ability to collect liquid through capillary action is inherent in the materials disclosed by Avakian '032. While the materials of Avakian may exhibit some capillary action, there is no indication in Avakian that this capillary action collects a predetermined amount of sample liquid. It appears that any liquid collected by capillary action in Avakian is minimal, inconsequential, and certainly not predetermined. Instead in Avakian, any predetermined amount of liquid is collected by a plunger of a pipette which is pressed and released causing a measured amount of liquid sample to be drawn, column 2 line 15-19.

It is only the present application which uses capillary action to collect a predetermined amount of sample liquid. The amount of liquid that is collected by capillary action, depends not only on the material of the sampling tip, but also of the size of the pores in the sampling tip. Large pores will produce little or no capillary action, while small pores create large capillary actions and can collect a much larger amount of liquid. Since there is no teaching nor suggestion in any of the applied references of a sampling tip collecting a predetermined amount of a sample liquid by capillary action, the applied references do not anticipate all the features of claim 47.

The collecting of a predetermined amount of sample liquid by capillary action is a significant feature of the present invention. It is very important that the size of the sample be controlled. If the sample is too small there may not be enough of the sample to conduct a proper analysis. The prior art appears to rely on other means to collect a sufficiently sized sample. This can be disadvantageous with regard to the cost of manufacturing, and the ease-of-use.

The dimensionally stable feature of the sampling tip is also significant with regard to collecting a predetermined amount of sample liquid. If the sample tip is flexible and compressible, the amount that a sample tip will be able to hold changes. If the sample tip is deformed during the

collection, it is most likely that the sample tip will be able to collect less than if the sample tip was not deformed. Since it is only the present invention which sets forth a sampling tip that is dimensionally stable during collecting, and collects a predetermined amount by capillary action, the present invention defines over the applied prior art.

Claim 44 sets forth that the sampling tip has a moisture indicator which indicates a collection of the predetermined amount of sample liquid in the sample tip. Applicant has reviewed Rabenecker, and finds no teaching nor suggestion of a moisture indicator indicating a collection of a predetermined amount of sample liquid. Previous office actions appear to indicate that it is the Examiner's position that the materials disclosed by Rabenecker provide visible indication of moisture either by swelling or change in color. Applicant finds no specific indication in Rabenecker that this occurs. Absent some specific teaching in the prior art that this occurs, the rejection is untenable. If this belief is based on the Examiner's own knowledge, applicant respectfully requests that this be stated, and that the Examiner provide an affidavit swearing to this knowledge, and that such is well known in the art.

Claims 1 and 3 are in this application, and are indicated as being withdrawn. These claims set forth the feature of the moisture indicator being one of an indicator dye or a material that expands in the presence of moisture. Applicant notes that this particular moisture indicator was indicated as being allowable in the office action of March 20 1, 2007, the advisory action of June 12, 2007, and the advisory action of July 31, 2007. It appears that this particular type of moisture indicator has been thoroughly searched and found to define over the prior art. Correspondingly, no additional searches should be required for claims 1 and 3 to be considered, and to also continue to be allowable. Applicant respectfully requests that claims 1 and 3 be rejoined into

consideration and considered as pending in this application.

If the Examiner has any comments or suggestions which would further favorable prosecution of this application, the Examiner is invited to contact applicant's representative by telephone to discuss possible changes.

At this time applicant respectfully requests reconsideration of this application, and based on the above amendments and remarks, respectfully solicits allowance of this application.

Respectfully submitted
for Applicant,



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